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THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL DAVID KNIGHT,

Defendant and Appellant.

A125579

(Sonoma County  
Super. Ct. No. SCR-538511)

Appellant Michael David Knight appeals his conviction for vehicular manslaughter with gross negligence (Pen. Code, § 192, subd. (c)(1)), arguing that the trial court erred by refusing to give the jury instructions on how to evaluate circumstantial evidence. We affirm.

**FACTUAL AND PROCEDURAL BACKGROUND**

On June 11, 2008, at about 5:00 p.m., Patricia Dellabruna was driving south in a pickup truck on Petaluma Hill Road, a two-lane road. It was a clear, dry day. Traffic was flowing steadily, with vehicles on the road traveling “around 40, 50 miles an hour.” Ahead of her, Dellabruna saw a motorcycle driven by a male followed by a tan sedan with a male driver and a female passenger. John Gauthier was driving the motorcycle and appellant was driving the sedan.

According to Dellabruna, Gauthier was driving the motorcycle “a little slow,” under 40 miles per hour. She observed that the tan sedan was weaving to the left and then to the right, onto the shoulder, “like it wanted to pass.” The sedan was unable to

pass because there were cars in the oncoming lane. Dellabruna slowed down to about 25 to 30 miles per hour because of her concern about the swerving sedan.

After the vehicles passed Valley House Road, the sedan went onto the right shoulder of the road and pulled even with the motorcycle. Appellant then turned suddenly to the left, in front of the motorcycle, which collided with appellant's sedan. The motorcycle driver went "flying" and was thrown about 40 feet from the point of collision. Immediately before the collision, appellant did not stop, use a turn signal, flash brake lights, or otherwise make a hand signal to alert other drivers that he intended to make a u-turn or a left turn. Near the area of the collision, the road had two rows of yellow "Botts' dots" dividing the road's two lanes, indicating that it was unlawful to pass, turn left, or make a u-turn.

Dellabruna stopped and ran to the injured motorcycle driver, who was bleeding from his head and appeared to have a bone protruding from his hip. The passenger in the sedan that collided with the motorcycle also approached the victim. However, appellant did not approach the victim or summon help, according to Dellabruna. Instead, he looked "very scared" and ran away. Gauthier died of his injuries later that day.

A motorist who stopped at the scene following the collision saw appellant flee the scene and followed him. That motorist flagged down a deputy sheriff and described the driver of the sedan. The deputy eventually found appellant and returned him to the scene of the collision. At the time the deputy first encountered him, appellant was talking on a cell phone, had dry grass in his hair, and was sweating. Appellant told the deputy, "I was coming to you, and I take full responsibility for the accident." The deputy noted that appellant was sweaty and hyperactive but did not recall smelling alcohol on appellant's breath. Two to three hours after the collision, appellant told a California Highway Patrol officer that he intended to make a u-turn after missing a right turn he had intended to make on Valley House Drive.

On December 4, 2008, the Sonoma County District Attorney filed a four-count information charging appellant with vehicular manslaughter with gross negligence (Pen. Code, § 192, subd. (c)(1)), felony hit and run (Veh. Code, § 20001, subd. (a)), driving

with a suspended license, a misdemeanor (Veh. Code, § 14601.5, subd. (a)), and driving without insurance, an infraction (Veh. Code, § 16028, subd. (a)). As to the vehicular manslaughter charge, it was alleged as an enhancement to the charge that appellant left the scene of an accident resulting in death. (Veh. Code, § 20001, subd. (c).) The information also contained an allegation that appellant had suffered a prior conviction for which he had served a prison term. (Pen. Code, § 667.5, subd. (b).)

Appellant pleaded guilty to felony hit and run, driving on a suspended license, and driving without insurance. The case proceeded to a jury trial on the remaining charge of vehicular manslaughter with gross negligence.

At trial, defense counsel pointed out that Dellabruna had previously told a district attorney investigator that the motorcycle had been the following the sedan immediately before the collision, in contrast to the content of her testimony at trial. Dellabruna did not recall making such a statement and said she may have misunderstood the investigator. She was also questioned about whether she had problems with her memory. She responded that she did not think she had problems with her memory although she admitted she had told the district attorney investigator that she took “a lot of medication” that could affect her short-term memory. She also could not recall telling the investigator that the driver of the sedan was not “really doing anything wrong” before the collision but was simply driving “swerve-ish” enough to make her cautious.

Among other evidence to support its case, the prosecution offered the testimony of California Highway Patrol officer Jason Salizzoni, the investigating officer, who was allowed to render an expert opinion concerning how the victim’s motorcycle had impacted appellant’s car. Officer Salizzoni testified that he had specialized training in accident investigation and that he had viewed or investigated 4,000 to 5,000 collisions in his career. Although he had previously been certified as a gang expert, he had never been certified as an expert in accident impact or reconstruction. Officer Salizzoni offered his opinion that the accident occurred because appellant’s sedan had turned left into the path of the motorcycle. He had spoken with Dellabruna immediately after the accident. She

had told him that the tan sedan passed the motorcycle on the right shoulder and immediately turned left directly into the path of the motorcycle.

The defense called Dr. Paul Herman, an accident reconstructionist and a former physicist at the Lawrence Livermore National Laboratory. The court accepted him as an expert in accident reconstruction. Dr. Herman opined that the sedan was traveling 10 miles per hour at the moment of impact. He assumed that the sedan had made or was making a u-turn and that the motorcycle had collided with the sedan as it was turning. Dr. Herman's findings were consistent with the sedan stopping or slowing to 10 miles per hour before attempting to make a u-turn. He testified that the motorcycle driver would have had almost no time—three-tenths of a second—to react to the sedan crossing its path. He acknowledged under cross-examination that he had not reviewed Dellabruna's statement, interviewed the officers who were at the scene, or visited the site where the collision occurred.

The jury found appellant guilty of vehicular manslaughter with gross negligence and found true the allegation that appellant fled the scene of an accident that resulted in death. In a separate court trial, the court found the prior prison term allegation to be true. The court sentenced appellant to serve a total prison term of 10 years, composed of the middle term of four years for vehicular manslaughter with gross negligence, with an additional five years for the leaving-the-scene enhancement, plus one additional year for the prior prison term enhancement. The court sentenced appellant to one year in prison for felony hit and run but stayed that term pursuant to Penal Code section 654. Appellant timely appealed.

## **DISCUSSION**

Appellant argues that the trial court committed reversible error by refusing to give any instructions informing the jury how to evaluate circumstantial evidence. He claims his mental state was proven entirely by circumstantial evidence, and he further contends that the precise events of the accident were determined principally by inferences drawn from the circumstances. As we explain, appellant's claim fails.

### **A. Background**

Appellant requested at trial that the court instruct the jury with CALCRIM Nos. 223 and 225, which concern circumstantial evidence and circumstantial evidence of intent or mental state. In general, CALCRIM No. 223 describes the difference between direct and circumstantial evidence and explains that “[b]oth direct and circumstantial evidence are acceptable types of evidence to prove or disprove the elements of a charge, including intent and mental state and acts necessary to a conviction, and neither is necessarily more reliable than the other.” CALCRIM No. 225 concerns circumstantial evidence of intent or mental state, and reads, in pertinent part, as follows: “The People must prove not only that the defendant did the acts charged, but also that (he/she) acted with a particular (intent/ [and/or] mental state). . . . [¶] . . . [¶] . . . [B]efore you may rely on circumstantial evidence to conclude that the defendant had the required (intent/ [and/or] mental state), you must be convinced that the only reasonable conclusion supported by the circumstantial evidence is that the defendant had the required (intent/ [and/or] mental state). If you can draw two or more reasonable conclusions from the circumstantial evidence, and one of those reasonable conclusions supports a finding that the defendant did have the required (intent/ [and/or] mental state) and another reasonable conclusion supports a finding that the defendant did not, you must conclude that the required (intent/ [and/or] mental state) was not proved by the circumstantial evidence.”

In arguing the need for the instructions, defense counsel contended that circumstantial evidence was required to establish the “gross negligence” element of the crime. Defense counsel argued in effect that the acts themselves could not establish gross negligence but that the jury was required to determine that appellant had a particular intent or mental state. Defense counsel specifically referred to evidence of appellant’s flight from the scene as circumstantial proof of appellant’s guilt. The prosecutor disagreed with defense counsel’s assessment, pointing out that gross negligence is not based upon the appellant’s subjective intent but is instead based upon the jury’s assessment of appellant’s *actions* as measured against an objective standard.

The court refused to give the requested instructions, which the court believed would be “unduly confusing.” The court explained: “[I]t seems to me, if you give [CALCRIM No.] 225 in this case, it’s going to make the jury think that there has to be some mental state shown beyond the acts being committed, and that doesn’t seem to be—the acts are what are going to be demonstrate the gross negligence, not his intent to commit to gross negligence.”

## **B. Analysis**

In assessing whether the instructions given to the jury correctly state the law, we apply a de novo standard of review. (*People v. Posey* (2004) 32 Cal.4th 193, 218.) “ ‘ ‘ [A] single instruction to a jury may not be judged in artificial isolation, but must be viewed in the context of the overall charge.’ ” [Citations.]’ [Citation.]” (*People v. Richardson* (2008) 43 Cal.4th 959, 1028.) Courts “ ‘must assume that jurors are intelligent persons and capable of understanding and correlating all jury instructions which are given.’ [Citation.]” (*Ibid.*)

The trial court is required to instruct the jury “ ‘ ‘on the general principles of law relevant to the issues raised by the evidence. [Citations.]’ ” (*People v. Breverman* (1998) 19 Cal.4th 142, 154.) A trial court must instruct the jury regarding how to evaluate circumstantial evidence “ ‘sua sponte when the prosecution substantially relies on circumstantial evidence to prove guilt. [Citations.]’ [Citation.]” (*People v. Rogers* (2006) 39 Cal.4th 826, 885; accord *People v. Wiley* (1976) 18 Cal.3d 162, 174.) “[T]he instruction . . . need not be given when circumstantial evidence is only incidental to and corroborative of direct evidence. [Citation.]” (*People v. Williams* (1984) 162 Cal.App.3d 869, 874.) “The rationale for refusing to give the instruction when the circumstantial evidence is only incidental and corroborative of direct evidence, is the danger of confusing the jury when the inculpatory evidence consists wholly or largely of direct evidence of the crime. [Citation.]” (*Ibid.*) “The fact that the elements of a charged offense include mental elements that must necessarily be proved by inferences drawn from circumstantial evidence does not alone require an instruction on the effect to be

given such evidence however. *The contrary is usually the rule.*” (*People v. Wiley, supra*, 18 Cal.3d at p. 175, italics added.)

Appellant’s primary claim is that the observable facts did not constitute direct proof of appellant’s mental state of gross negligence. According to appellant, this mental state “could only be established either by appellant’s confession of it, which did not occur, or by the jury’s inferential conclusion.” Appellant contends the jury’s conclusion that appellant was grossly negligent could not be based upon some “set of physical, observable actions” but instead required the jury to assess “the relative state of appellant’s mind.”

To the extent appellant contends the jury was required to draw an inference about his subjective state of mind, he is mistaken. Gross negligence “has been defined as the exercise of so slight a degree of care as to raise a presumption of conscious indifference to the consequences. [Citation.]” (*People v. Watson* (1981) 30 Cal.3d 290, 296.) “A finding of gross negligence is made by applying an *objective* test: if a *reasonable person* in defendant’s position would have been aware of the risk involved, then defendant is presumed to have had such an awareness. [Citation.]” (*Ibid.*; accord *People v. Bennett* (1991) 54 Cal.3d 1032, 1036.) By contrast, a finding of implied malice, such as might be required to support a second degree murder charge, “depends upon a determination that the defendant *actually appreciated* the risk involved, i.e., a *subjective* standard. [Citation.]” (*People v. Watson, supra*, at pp. 296-297.)

Therefore, contrary to the suggestion in appellant’s briefs, the jury was not required to draw an inference about appellant’s subjective state of mind. Instead, it was asked to consider whether a reasonable person in appellant’s position would have known that his or her actions created a high risk of death or great bodily injury. (See CALCRIM No. 592.) In other words, the jury was called upon to use an objective, reasonable person standard in assessing the evidence of appellant’s actions.<sup>1</sup>

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<sup>1</sup> In *People v. Ochoa* (1993) 6 Cal.4th 1199, 1205-1206, our Supreme Court held that a jury may consider a defendant’s actual awareness of the risks in assessing whether a

Appellant correctly observes that a finding of gross negligence requires the jury to make an inference based upon the circumstances of the incident. Gross negligence is not shown by the mere fact a defendant violated one or more traffic laws. (*People v. Bennett, supra*, 54 Cal.3d at p. 1037; *People v. Von Staden* (1987) 195 Cal.App.3d 1423, 1427.) Rather, the jury must consider “all relevant circumstances” to determine whether a defendant acted in a grossly negligent manner. (See *People v. Bennett, supra*, at pp. 1038, 1040.) Thus, the evidence required to support a finding of gross negligence is circumstantial in the sense that it does not directly prove the required mental state but instead constitutes indirect evidence from which the jury may logically and reasonably infer that a reasonable person in the defendant’s position would have appreciated the risk. (See CALCRIM No. 223 [defining direct and circumstantial evidence].)

Notwithstanding our conclusion that the evidence of gross negligence is circumstantial in nature, we nonetheless conclude that an instruction on circumstantial evidence with regard to intent or mental state was unnecessary in this case. Indeed, as we explain, such an instruction would have confused rather than clarified the issues for the jury.

First, the requested instruction concerning circumstantial evidence of intent or mental state, CALCRIM No. 225, informs the jury that the People must prove the defendant acted with a particular intent or mental state. Consequently, the instruction effectively invites the jury to consider the defendant’s subjective state of mind in order to determine whether circumstantial evidence allows a conclusion that the defendant “had” the required intent or mental state. (CALCRIM No. 225.) However, as explained above, a jury need not determine the subjective state of mind of a defendant charged with gross negligence. Rather, the jury must determine whether a reasonable person in defendant’s position would have had the required state of mind—a conscious indifference to the

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reasonable person in defendant’s position would have been aware of the risks. The court clarified that the test for gross negligence remains an objective one and that a defendant’s claimed lack of awareness of the risks would not preclude a finding that a reasonable person in defendant’s position would have recognized the risk. (*Id.* at p. 1205.)

consequences. (*People v. Watson, supra*, 30 Cal.3d at p. 296.) If so, the defendant is *presumed* to have acted with a conscious disregard for the consequences of his or her actions. (*Ibid.*) Insofar as the instruction invites the jury to consider a defendant's subjective state of mind, the instruction misstates the law governing gross negligence. At a minimum, the requested instruction engenders confusion to the extent it suggests the prosecutor must prove the defendant's relative state of mind.

Moreover, the instruction given to the jury on gross vehicular manslaughter—CALCRIM No. 592—accurately and sufficiently states the law with regard to gross negligence. Here, the jury was instructed, in relevant part, that a “person acts with gross negligence when: One, he or she acts in a reckless way that creates high risk of death or great bodily injury; and two, a reasonable person would have known that acting in that way would create such a risk.” Thus, the jury was directed to apply an objective standard when considering whether appellant's actions constituted evidence of gross negligence, as the law requires. The instruction did not allow the jury to find that appellant acted in a grossly negligent manner simply because he violated traffic laws, as appellant contends. Rather, the instruction necessarily required the jury to draw an inference about whether a reasonable person in appellant's position would have known that appellant's actions created a high risk of death or bodily injury.

Appellant's reliance on federal case law is unavailing. In the cases relied upon by appellant, *Hanna v. Riveland* (9th Cir. 1996) 87 F.3d 1034, 1038, and *Schwendeman v. Wallenstein* (9th Cir. 1992) 971 F.2d 313, 316, the federal court held that an instruction allowing the jury to infer recklessness from the mere fact the defendant was speeding relieved the prosecution of its burden of proving every element of the crime beyond a reasonable doubt. Here, unlike in the federal cases cited by appellant, the jury instructions did not permit the jury to infer that appellant acted in a grossly negligent manner simply because he committed traffic violations. Instead, the court instructed the jury that the prosecution had to prove that any misdemeanors or traffic infractions were committed “with gross negligence,” which was further defined as discussed above. The jury necessarily had to consider whether a reasonable person in appellant's position

would have known that appellant's actions created a high risk of death or great bodily injury, thus precluding an inference of gross negligence based simply upon the fact appellant committed traffic violations. Moreover, the jury was specifically instructed to find appellant not guilty of vehicular manslaughter with gross negligence if the prosecution failed to prove beyond a reasonable doubt that appellant committed that crime. In short, the jury instructions given in this case did not relieve the prosecution of its burden of to prove every element of the crime beyond a reasonable doubt.

For these reasons, the requested instruction on circumstantial evidence of intent or mental state—CALCRIM No. 225—was not only superfluous but would have invited confusion about whether the jury had to draw an inference about appellant's subjective state of mind. The companion instruction that defined direct and circumstantial evidence—CALCRIM No. 223—was likewise unnecessary.

Appellant also claims the trial court had a duty to instruct the jury on circumstantial evidence so that the jury would know how to evaluate circumstantial evidence concerning how the collision occurred. We disagree. As an initial matter, we note that appellant's trial counsel requested that the trial court instruct the jury with CALCRIM No. 225—which is limited to a discussion of circumstantial evidence of intent or mental state—along with the companion instruction—CALCRIM No. 223—that defines direct and circumstantial evidence. Appellant's trial counsel did not request the more generalized circumstantial evidence instruction—CALCRIM No. 224—that is to be used in lieu of CALCRIM No. 225 when elements of the offense other than intent or mental state turn on circumstantial evidence. By requesting CALCRIM No. 225, appellant's trial counsel was effectively taking the position that the only element of the offense that rested on circumstantial evidence was intent or state of mind.<sup>2</sup> Indeed, in

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<sup>2</sup> “CALCRIM Nos. 224 and 225 provide essentially the same information on how the jury should consider circumstantial evidence, but CALCRIM No. 224 is more inclusive. [Citation.]” (*People v. Samaniego* (2009) 172 Cal.App.4th 1148, 172.) CALCRIM No. 224 “is the proper instruction to give unless the only element of the offense that rests substantially or entirely on circumstantial evidence is that of specific intent or mental

requesting instructions concerning circumstantial evidence, appellant's trial counsel limited her argument to evidence of the required mental state. Appellant's trial counsel did not suggest that the events surrounding the collision were proven largely by circumstantial evidence, as appellant now contends on appeal.

It is unsurprising that appellant's trial counsel sought a circumstantial evidence instruction *only* with respect to intent or mental state. Contrary to appellant's contention on appeal, the events surrounding the collision and the moments leading up to it were proven primarily with direct evidence. Dellabruna offered direct, eyewitness testimony concerning the collision and the manner in which appellant was driving immediately before the accident. Indeed, in closing argument the prosecutor emphasized events supported by direct evidence. She stated that appellant violated at least three different traffic laws—by making an unauthorized u-turn, by turning without using a signal, and by failing to signal the intention to turn within the last 100 feet traveled. She pointed out that appellant had been weaving in his lane in a manner that caused Dellabruna to take caution and that he did so on a heavily traveled two lane road during weekday commuting hours. According to the prosecutor, appellant made an abrupt u-turn without stopping or signaling, giving Gauthier no time to react. The cited facts were all supported by direct evidence. Any circumstantial evidence concerning the collision was incidental or largely corroborative of the direct evidence. Under the circumstances, the court had no sua sponte due to instruct the jury on how to assess circumstantial evidence.

Even if we were to conclude the trial court erred in failing to give the requested circumstantial evidence instructions, appellant was not prejudiced by the error.

Instructional error is reviewed under either *Chapman v. California* (1967) 386 U.S. 18,

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state.” (*People v. Cole* (2004) 33 Cal.4th 1158, 1222; accord Bench Notes to CALCRIM No. 225 (Summer 2010) p. 49 [“Give this instruction when the defendant's intent or mental state is the only element of the offense that rests substantially or entirely on circumstantial evidence. If other elements of the offense also rest substantially or entirely on circumstantial evidence, do not give this instruction. Give CALCRIM No. 224, *Circumstantial Evidence: Sufficiency of Evidence*”].)

24, or *People v. Watson* (1956) 46 Cal.2d 818, 836. Under the *Chapman* standard, reversal is required unless we conclude beyond a reasonable doubt the error was harmless. (*Chapman v. California, supra*, 386 U.S. at p. 24.) Under the alternative *Watson* standard, reversal is not required unless it is reasonably probable the defendant would have obtained a more favorable result had the error not occurred. (*People v. Watson, supra*, 46 Cal.2d at p. 836.) The People contend the *Watson* standard applies, citing *People v. Rogers, supra*, 39 Cal.4th at pp. 886-887. Appellant disagrees, contending that the Supreme Court's discussion of the issue in *People v. Rogers* arguably was dicta, with the court merely expressing "doubt" that the right to a circumstantial evidence instruction rose to the level of a liberty interest protected by the due process clause so as to require harmless error review under the *Chapman* standard.

We need not decide whether the *Chapman* or *Watson* standard for prejudicial error applies here because the error was harmless under either standard. The requested instructions would not have altered the way the jury processed the direct eyewitness evidence that appellant committed multiple traffic violations, that he committed them in an abrupt manner, that he did so during the evening commute, and that he was driving erratically before he made the u-turn that caused Gauthier to suffer fatal injuries. Appellant acknowledges the prosecution's reliance on eyewitness testimony but nonetheless argues the expert testimony concerning the collision "was entirely circumstantial." However, the fact that experts offered opinions concerning the collision does not suggest the jury would have reached a different conclusion if the court had given instructions on circumstantial evidence. The court gave an instruction specifically tailored to expert testimony that explained how the jury was to assess and weigh the opinions offered by the parties' experts. (See CALCRIM No. 332.) An instruction concerning circumstantial evidence would have added little or no additional guidance to the jury on how to assess expert testimony.

Ultimately, the prosecution's case turned on the credibility of the one eyewitness to the collision, Dellabruna. Appellant's trial counsel devoted a substantial part of her closing argument to attacking Dellabruna's credibility, arguing there were inconsistencies

in her statements and that medication affected her short-term memory. The requested instructions would have had no bearing on this critical issue of Dellabruna's credibility. Therefore, any error in failing to give instructions on circumstantial evidence was harmless beyond a reasonable doubt.

**DISPOSITION**

The judgment is affirmed.

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McGuiness, P.J.

We concur:

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Siggins, J.

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Jenkins, J.